



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/735,291	06/29/2010	Carlo Cattaneo	1586-023	1273

47888 7590 01/26/2017
HEDMAN & COSTIGAN, P.C.
ONE ROCKEFELLER PLAZA, 11TH FLOOR
NEW YORK, NY 10020

EXAMINER

TEFERA, HIWOT E

ART UNIT	PAPER NUMBER
----------	--------------

3637

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

01/26/2017

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail@hgcpatent.com
ipdocket@hgcpatent.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARLO CATTANEO

Appeal 2015-001598
Application 12/735,291
Technology Center 3600

Before: CHARLES N. GREENHUT, LYNNE H. BROWNE, and
GORDON D. KINDER, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 3, 5, 6, and 9–15. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm, designating our affirmance a new grounds of rejection under 37 C.F.R. § 41.50(b).

CLAIMED SUBJECT MATTER

The claims are directed to an adjustable wall cupboard holder group for anchoring a cupboard to the wall. Claim 14, reproduced below, is illustrative of the claimed subject matter:

14. An adjustable wall cupboard holder group (10) for anchoring a wall cupboard (11) to a wall, said wall cupboard holder group (10) comprising a hooking element (14), adapted to engage a supporting element fixed to a wall having a first end and a second end, a central portion (16) affixed to the first end of said hooking element (14), said central portion (16) having regulation means (17, 17') positioned therein for adjusting the depth and inclination of said hooking element (14), a hook (15) coupled to said first end of said hooking element (14) where said wall cupboard holder group (10) is adapted to be fixed on a side of wall cupboard (11), said central portion (16) having two side flanges (18, 18') which extend above and below said hooking element (14), respectively, both of said side flanges (18, 18') being adapted to be attached to a side of said wall cupboard (11) wherein each of said side flanges (18, 18') has at least one plug element (20, 20') which is resistant to shear forces and protrudes from each of said side flanges (18, 18'), said plug elements (20, 20') being hollow cylindrical plugs with a circular section, said wall cupboard having holes (41) in an internal side wall (12) for coupling with said plug elements (20, 20')_ wherein each of said side flanges (18, 18') comprise at least one fixing means (19, 19') for fixing said flanges (18, 18') to said side (12) of said wall cupboard (11).

REJECTIONS

Claims 3, 5–6, 10, 12, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over EP1228720 (Rioja), in view of U.S. 5,607,271 (Salice) in further view of U.S. 4,432,680 (Molina).

Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Rioja, Salice, Molina and U.S. 5,611,637 (Brustle).

Claims 9 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rioja, Salice, Molina and WO 2004/032681 A1 (Cattaneo).

OPINION

Appellant correctly argues that the Examiner's characterization of the embossed elements 25 of Rioja as "plug elements," according to claims 14 and 15, is unreasonably broad. Br. 4. The embossed elements 25 are not fit into anything nor do they appear to be capable of being fit into anything without either significant modification to Rioja's bracket or cooperation with some oddly shaped hole designed specifically for their accommodation (*see* Ans. 3). The mere fact that it is conceivable to construct a hole that could receive elements 25 of Rioja does not, without more, demonstrate they are reasonably regarded as "plug elements" according to claim 14.

Rioja does, however, have "plug elements." The barbed structures directly above embossed elements 25, as viewed in Figure 5, though not labeled or discussed, would be understood by one skilled in the art to be snugly received in, and thus "plug," a conventional hole in a cabinet. This understanding is further supported by the illustration of the heads of screws, which are also not labeled or discussed, but can be seen in Figures 1 and 5, and would be understood to attach Rioja's bracket to the cabinet. Rioja's figures are relevant for all they fairly suggest. *In re Aslanian*, 590 F. 2d 911 (CCPA 1979)(citing *In re Seid* 161 F. 2d 229, 231 (CCPA 1947)); *See also In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972).

With this modification to the Examiner's position, as discussed above, we turn to the issues raised regarding the remainder of the Examiner's rejection. The Examiner's finding that making parts integral (Final Act. 6

(citing MPEP 2144.04)), like the plugs of Salice (*see* Final Act. 5 (citing Salice elements 106, Figs. 20, 24; col. 10, ll. 14–19) was well-known in the art stands uncontroverted. Reducing parts, facilitating alignment and assembly are predictable results of such modification. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l. v. Teleflex*, 550 U.S. 398, 416 (2007).

Regarding the recited plug attribute of being “resistant to shear forces,” (Br. 5) the Examiner frames the rejection both with and without Molina. We agree with the Examiner that Molina is relevant or analogous. *See* Br. 5–6; Ans. 4 (“all three references [] show a way to mount a fixing device on a wall of a panel.”); *see also KSR Int’l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1742, 167 L.Ed.2d 705 (2007)(“[F]amiliar items may have obvious uses beyond their primary purposes.”). The Examiner styles the portion of the rejection citing Molina as teaching the use of a plug to absorb shear forces, concluding doing so would be an obvious modification to the Rioja and Salice brackets. Final Act. 6. Molina may be better characterized as express evidence that bushings or plugs of the type disclosed in Salice would resist shear forces to at least some extent. The Examiner correctly points out that the claim recites neither a particular magnitude resisted, nor a particular direction or origin of, the recited shear forces. Ans. 3–4. Shear forces on bushings 106 could arise from the left, right, into, or out of, the page, as viewed in Figure 20 of Salice. If threads 123 are to cut into the bore holes in which they are received there must be an opposing force resisting movement. *See* Salice col. 10, l. 9–col. 11, l. 31. Bushings 106 in the stationary plate 104 appear to be the only structure depicted in Salice that would provide this function. *See* Figs. 20, 21. As such, while the fastening

plate 103 may be adjusted, the bushings 106 in the under-plate 104 must resist movement and thus resist shear forces in at least the direction indicated by arrow A (left and right in Figure 21). Furthermore, Salice's mounting plate 103 is designed to support a hinge arm. Although depicted on a horizontal panel 101, which would induce at least some shear forces when a hinge and/or a door is attached, if mounted vertically, as cabinet hinges commonly are, the bushings would necessarily need to resist significant sheer forces into and out of the page as viewed in Figure 20. The Examiner correctly found that Molina expressly describes that it is known to use bushings or sleeves 66 of this type for resisting sheer forces. Final Act. 6 (citing Molina col. 7, ll. 12–17; Figs. 5–7). The Examiner correctly found that Salice's bushings are inherently "resistant to shear forces" and also correctly concluded, in the alternative, that it would have been obvious to make them resistant to shear forces because that would be beneficial, if not necessary, for them to function properly when used as intended. *Id.* Appellant's final comment, that Brustle does not disclose resistance to shear forces (Br. 6) is not germane to the rejections before us for review in which Salice and Molina were relied upon by the Examiner regarding this aspect of the claimed subject matter.

Although we have relied upon the same statutory basis and prior art, as we have modified the Examiner's rejections we designate our affirmance thereof as including new grounds of rejection pursuant to 37 C.F.R. § 41.50(b) in order to ensure Appellant has a fair opportunity to respond.

DECISION

The Examiner's rejections are affirmed. We designate our affirmance as including a new ground of rejection pursuant to 37 C.F.R. § 41.50(b).

Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED; 37 C.F.R. § 41.50(b)